

Appl. No. 10/043,657
Amdt. dated October 15, 2004
Reply to Office Action of June 15, 2004

REMARKS

Claim 13 has been amended. Claims 23 – 26 have been cancelled.

Claims 13 and 15 – 20 have been rejected under 35 USC §102(b) as being anticipated by Boxer. The Examiner argues that Boxer discloses a flexible pouch having a plurality of layers joined together to form at least two compartments with at least one of the compartments filled with a thermal capacitance medium and that the medium consisting of a cooling or heating medium would be inherent depending on the temperature of insulation relative to the liquid. However, Boxer discloses “a layer of suitable insulation” (Col. 4, lines 56 – 57), not a thermal capacitance medium. Although the disclosure of Boxer does not further define the nature of the suitable insulation, the drawings (Fig. 7) suggest a layer of polymeric foam. As has been discussed at length in earlier responses to the Examiner’s rejections, a thermal capacitance medium, which imparts heat or cold to adjacent materials, is not the same as a thermal insulator, which merely slows temperature transfer. However, in order to further the prosecution of the present application, independent claim 13 has been amended to note that the present inventive pouch includes a thermal capacitance medium which is a gel. Accordingly, it is requested that the Examiner reconsider and withdraw the present rejection.

Claims 13, 19 and 20 have been rejected under 35 USC §102(e) as being anticipated by Gleason et al. The Examiner argues that Gleason et al. disclose a hydration system that includes a flexible pouch having a plurality of layers forming at least two compartments wherein at least one is filled with a thermal capacitance medium (28) which is capable of being a heating medium. However, as with the Boxer reference discussed above, Gleason et al. merely disclose an insulator, preferably of open-cell foam

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(Col. 3, lines 18 – 23), which slows temperature transfer, not a thermal capacitance medium which actively imparts heat or cold. Thus, and as the present claims have been amended to require that the present thermal capacitance medium is a gel, it is requested that the Examiner reconsider and withdraw the present rejection.

Claims 23 – 26 have been rejected under 35 USC §103(a) as being unpatentable over Harris in view of Johnston. As claims 23 – 26 have been cancelled it is requested that the Examiner withdraw this rejection.

Claims 13 and 15 – 22 have been rejected under 35 USC §103(a) as being unpatentable over Fawcett in view of Boxer and further in view of Satterfield. The Examiner argues that Fawcett discloses a hydration system substantially as claimed but without a plurality of layers all joined together to form at least two compartments, which is disclosed by Boxer, and that it would have been obvious to replace the insulation of Boxer with the gel of Satterfield. Specifically, the Examiner argues that it is obvious to substituted gel for insulation. However, the gel of Satterfield and the insulation of Boxer are two differing materials serving two differing functions. As noted above, the insulation passively slows temperature transfer while the gel actively imparts heat or cold. Thus, it is submitted that only through the hindsight gained by a review of the present specification would it be obvious to replace the insulation of Boxer with gel. Accordingly, it is requested that the Examiner reconsider and withdraw the present rejection.

Further evidence of nonobviousness is submitted herewith in a declaration of the inventor. In past Office Action responses Applicant's prior representative presented a portion of this evidence but it was never acknowledged or considered by the Examiner. It

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is assumed that the evidence was ignored by the Examiner because it was not presented in declaration form as required by MPEP §716.02(g). An attempt to discuss this matter with the Examiner was made. After weeks of unreturned telephone messages the Examiner's Supervisor was reached and it was learned that the present named Examiner is no longer with the Patent Office. Therefore, it is requested that the newly assigned Examiner consider the evidence of secondary considerations included herewith. Particularly, it is submitted that review articles included as exhibits to the declaration are evidence of the present claimed invention satisfying a long felt need in the hydration art. Specifically, prior to the present invention means have not been available for providing heated or chilled drinking fluid in a hydration pack system which allow the pack to remain flexible.

Accordingly, it is submitted that the present case is in condition for allowance and such action is respectfully requested.

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Respectfully submitted,


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